

IN THE SENATE OF THE UNITED STATES.

MAY 4, 1858.—Ordered to be printed.

Mr. BAYARD submitted the following

REPORT.

The Committee on the Judiciary, to whom was referred the petition of Francis D. Pons, have given the same due consideration, and submit the following report:

The petitioner states that on the 25th of November, 1824, under the provisions of the act of June 26, 1834, entitled "An act for the relief of certain inhabitants of East Florida," he presented to the judge of the superior court for the eastern district of the then Territory of Florida a memorial setting forth his claims for losses alleged to have been occasioned by the troops of the United States in East Florida in the years 1812 and 1813. That the amount of loss claimed by him in his memorial was \$3,915 79; that of this amount \$2,625 was claimed for the destruction of two frame houses, and the residue for the loss of a vessel and cargo, and other property. That his cause was heard before the judge of the said court, and the sum of two thousand dollars allowed to him as the value of the two houses, with interest; but that the claim for the value of the vessel and other property was disallowed, because, in the opinion of the court, the evidence was not sufficiently strong to justify a decree for its loss.

The petitioner further represents that he resided at Fernandina, far distant from St. Augustine, where the court was held, and employed an agent and attorney to prosecute his claim, to whom he furnished the names and residences of all his witnesses, whose testimony he instructed his attorney to have taken. The name of the attorney is not stated in the petition, nor the names of the witnesses furnished to him; nor is there even a direct allegation that the attorney failed to have the examination of any and what witness taken, though the allegation is made, that if the testimony of certain unnamed witnesses had been taken, the loss of the vessel and cargo and other property would have been established. It is also alleged that the petitioner advised that several of the witnesses are yet living. The petitioner also states that until recently he supposed that the witnesses had been examined; that the decision of the judge has been acted upon by the Secretary of the Treasury, and thus, by the inattention and neglect of his attorney, he has sustained a serious loss, and is without remedy,

except through the action of Congress. A copy of the record of the proceedings before the court in Florida accompanies the petition, and he prays for the passage of an act of Congress authorizing him to take and file additional testimony in relation to the claim for the loss of the vessel and cargo and other property, which was formerly disallowed for defect of testimony, and that the judge of the United States district court for the northern district of Florida may be authorized to adjudicate his claim for the same. The petition purports to be signed by Francis D. Pons, by his attorney, but the name of the attorney is not signed, nor is there evidence of any authority to sign the name of the petitioner. No affidavit is made authenticating the facts stated as grounds for the relief prayed, and, from aught that appears, the petition may have been draughted and presented without the authority or knowledge of the petitioner.

The want of evidence of such authority, and of even *prima facie* evidence of the truth of the material facts alleged and relied upon as a reasonable ground for the relief asked, would alone be sufficient cause for denying the relief prayed. If, however, the petition had been signed and the facts sworn to by the petitioner, the case presented would not justify, much less require, that its prayer should be granted. The case from the record appears to have been fairly heard as regards the claims of the petitioner, and witnesses were examined on his behalf, but no witness on behalf of the United States; and on a case so presented, the court disallowed the claim for the loss of the vessel and cargo. The testimony appears in the copy of the record, and it cannot be doubted that there was no evidence to show that the vessel and cargo were destroyed by the troops of the United States, or persons in the employment of the United States.

The decision disallowing the claim is correct on the evidence before the court, and no principle of justice seems to require that the party who failed to produce the proper testimony at the hearing of his case should now, at the lapse of twenty-three years since the hearing, be permitted, after receiving the amount adjudged to him, to introduce further evidence to establish a claim which he then failed to prove.

The precedent would be a dangerous one, and would open the door to limitless frauds upon the government. The petitioner had a full and fair hearing; and even if the alleged negligence of his agent could be supposed to have made the decree in his favor less than it otherwise would have been, at least reasonable diligence, with a specification of the names of the witnesses, and proof that a list was actually furnished to the agent, and also that the witnesses named in the list and not examined are still living, should be conditions precedent to any relief. "*Vigilantibus et non dormientibus jura subveniunt*" is a judicial maxim, applicable with peculiar force to such a request for special legislation.

In the present case, more than twenty-three years have elapsed from the hearing and decree and its confirmation by the Secretary of the Treasury, and no reason or excuse is presented why the claimant did not sooner become aware of the alleged negligence of his agent. Nor is there the slightest proof of any such negligence, nor of the existence of a single living witness conversant of the transaction,

whose name was given to the attorney before the original hearing. To permit a further hearing on the vague, indefinite, and unsupported allegations of the petitioner would but hold out inducements to fraud, nor would there be now any mode in which the government could, after such a lapse of time, be guarded against fraudulent testimony, or that tendency to convert hearsay into fact, so unavoidably incident to remote transactions with aged and otherwise credible witnesses.

The committee are of opinion that the prayer of the petition ought not to be granted.

